UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1817 Saxon Lane, Maple Glen, PA 19002

Address of Defendant: 205 North Michigan Avenue, Chicago, IL 60601

Place of Accident, Incident or Transaction: ______

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☑

Does this case involve multidistrict litigation possibilities? Yes☐ No☑

RELATED CASE, IF ANY:
Case Number: ______ Judge ______ Date Terminated: ______

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
   Yes☐ No☑
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
   Yes☐ No☑
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☑
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
   Yes☐ No☑

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☑ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) ______

B. *Diversity Jurisdiction Cases:*
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
   (Please specify) ______

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Thomas J. Johanson, counsel of record do hereby certify:

☑ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 07/01/16 [signature] Attorney-at-Law 29350 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07/01/16 [signature] Attorney-at-Law 29350 Attorney I.D.#

CIV. 609 (5/2012)

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Paul Walter Pocalyko	:	CIVIL ACTION
v.	:	
Baker Tilly Virchow course, LLP	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

07/01/16	[signature]	Plaintiff
Date	**Attorney-at-law**	**Attorney for**
215-564-6688	215-564-2526	tjohanson@moodklaw.com
Telephone	**FAX Number**	**E-Mail Address**

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Paul Walter Pocalyko

(b) County of Residence of First Listed Plaintiff: Montgomery County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Thomas J. Johanson, Esq.
David P. Helwig, Esq.
Marks, O'Neill, O'Brien, Doherty & Kelly, P.C.
1800 John F. Kennedy Blvd, Suite 1900
Philadelphia, PA 19103

DEFENDANTS

Baker Tilly Virchow

County of Residence of First Listed Defendant: Cook County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☒ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 1 July 2016

SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAUL WALTER POCALYKO 1817 Saxon Lane Maple Glen, PA 19002, Plaintiff, v. BAKER TILLY VIRCHOW CROUSE, LLP 205 North Michigan Avenue Chicago, IL 60601-5927, Defendant.	: CIVIL ACTION NO.

COMPLAINT

1. This action seeks relief under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., for Defendant's termination of Plaintiff's employment based on Plaintiff's age. The Court has subject matter jurisdiction over that claim under 28 U.S.C. §1331.

2. This action also seeks relief at common law based on breach of contract, conversion, and promissory estoppel, for Defendant's failure to pay Plaintiff his agreed upon compensation, failure to pay Plaintiff the Retirement and Separation benefits to which he was entitled, and failure to pay Plaintiff the full amount his capital deposit with Baker Tilly. Additionally this action seeks a declaration that Plaintiff is not bound by the terms of the Joinder and

Transition Agreement or the Fourth Amended and Restated Partnership Agreement which are discussed below. The Court has subject matter jurisdiction over those claims under 28 U.S.C. §1332.

3. Paul Walter Pocalyko is an individual who currently and at all times relevant to this action was a resident of Maple Glen, Montgomery County, Pennsylvania. At the time his employment was terminated by Baker Tilly he was 54 years old.

4. Baker Tilly Virchow Crouse, LLP ("Baker Tilly") is a limited liability partnership organized under the laws of Illinois, whose principal place of business is Chicago, Illinois.

5. Baker Tilly has offices in Philadelphia, Pennsylvania, and all or substantially all of the events and conduct from which this action arises occurred within the geographical boundaries of the U.S. District Court for the Eastern District of Pennsylvania. Therefore, venue is proper.

6. Pocalyko is a licensed Certified Public Accountant. From April 26, 2001 through September 29, 2014, Pocalyko was an equity partner at the accounting firm of ParenteBeard LLP and its predecessor Parente Randolph LLP, and was based at its Philadelphia, Pennsylvania office.

7. During his tenure at the Parente entities Pocalyko practiced in the firms' Forensic Litigation and Valuation Services ("FLVS") group.

8. At all times relevant to this action, by virtue of the amount of their collective equity interest Jeffrey L. Ferro, Robert J. Ciaruffoli, and Robert J. Radics were the controlling members of ParenteBeard.

9. Beginning in 2013 Ferro, Ciaruffoli, and Radics entered into negotiations with Baker Tilly for the purpose of combining the practices of ParenteBeard and Baker Tilly. Ultimately the firms agreed to merge effective October 1, 2014, under the Baker Tilly name. Although denominated a merger, in practical effect the combination constituted in large part an acquisition by Baker Tilly of ParenteBeard's clients and goodwill.

10. As part of the merger Ferro and Ciaruffoli became "Common Equity Holders" and members of the Board of Directors of Baker Tilly.

11. Prior to October 1, 2014, Ferro and Ciaruffoli met with Pocalyko to persuade Pocalyko to join the merged firms. In so doing Ferro and Ciaruffoli acted as agents for Baker Tilly. They represented to Pocalyko, inter alia, that his compensation at Baker Tilly would be at least equal to that he was then receiving at ParenteBeard. That representation eventually proved to be false.

12. In reliance on the representations of Ferro and Ciaruffoli, Pocalyko agreed to join Baker Tilly as a "Preferred Equity Holder" and signed a Joinder and Transition Agreement. Although "Preferred Equity Holders" were characterized as "Partners" they were essentially employees who had no vote

on decisions affecting Baker Tilly and no interest in the firm's net profits. The Joinder and Transition Agreement provided that Pocalyko agreed to be bound by the terms of the Fourth Amended and Restated Partnership Agreement of Baker Tilly dated as of June 1, 2014. That Agreement included, inter alia, a Covenant Not to Compete with Baker Tilly for two years after one ceased to be a Baker Tilly partner.

13. Prior to the merger of Baker Tilly and ParenteBeard, Pocalyko held an $117,600 equity interest on ParenteBeard. As part of the merger $100,000 of that amount was transferred to Baker Tilly pursuant to the Joinder and Transition agreement. The balance of Pocalyko's equity interest was paid to him. Had Pocalyko not been induced by Ferro and Ciaruffoli to join Baker Tilly his entire equity interest in ParenteBeard would have been paid to him on or after October 1, 2014.

14. Prior to the merger Pocalyko held a partially vested interest in the ParenteBeard Retirement and Separation Agreement. Pocalyko's interest had a gross Redemption Value of approximately $400,000. Had Pocalyko not been induced by Ferro and Ciaruffoli to join Baker Tilly, after October 1, 2014, he had would have been begun receiving monthly payments under the Retirement and Separation Agreement in the amounts and over the period of

time specified by the Agreement until his vested interest was paid to him in full.

15. As part of the merger between Baker Tilly and ParenteBeard, Baker Tilly became legally responsible for ParenteBeard's obligations to Pocalyko under the Retirement and Separation Agreement.

16. Shortly before October 1, 2014, a number of ParenteBeard partners and employees, were either terminated by or coerced into leaving ParenteBeard. All or most of these individuals are believed to have been more than 40 years of age.

17. After October 1, 2014, a number of former ParenteBeard partners and employees, were either terminated from or coerced into leaving Baker Tilly. All or most of these individuals are believed to have been more than 40 years of age.

18. From October 1, 2014 through February, 2015, Pocalyko's compensation was the same as it had been at ParenteBeard.

19. Tony Fuller was Pocalyko's supervisor at Baker Tilly.

20. On November 19, 2014, Fuller asked Pocalyko: "How old are you, and how long do you plan to continue doing this work?"

21. After the merger Baker Tilly's FLVS group struggled to meet income projections due to a number of factors, none of which were attributable to a

lack of competence or diligence on the part of Pocalyko or other members of the FLVS group. To the contrary the problems resulted from management decisions of Baker Tilly.

22. In March, 2015, Pocalyko and other FLVS group members were informed by Fuller that their annual compensation was being reduced and that they were required to repay Baker Tilly the amounts by which they were "overdrawn". Pocalyko's annual pay was to be reduced by $168,229 and he was to repay Baker Tilly $112,153 by May 31, 2015 as means of Baker Tilly retroactively imposing the reduction in pay.

23. The FLVS group was assigned a new budget that it was to achieve by May 31, 2015.

24. As the result of the efforts of Pocalyko and the other members of the FLVS group on June 3, 2015, Fuller informed the FLVS group that their estimated revenue numbers exceeded the new budget and congratulated them on the team effort which allowed them to do so.

25. On September 29, 2015 Fuller informed Pocalyko that Baker Tilly was terminating his employment.

26. Thereafter all of Pocalyko's work was reassigned to, David Duffus, a younger Baker Tilly partner who is believed to have been forty-eight years old at that time. As the result of his lower rate of compensation and due to the fact that

Baker Tilly was responsible for significantly less in ParenteBeard legacy financial obligations to Mr. Duffus than it owed to Pocalyko, Baker Tilly realized a substantial financial benefit by terminating Pocalyko and redirecting his work to Mr. Duffus.

27. Since terminating Pocalyko Baker Tilly has refused to pay approximately $35,000 of Pocalyko's capital contribution to Baker Tilly despite demands by Pocalyko that it do so.

28. After initially making a few payments to Pocalyko under the Retirement and Separation Agreement Baker Tilly has ceased making payments despite demands by Pocalyko that it do so.

29. From March, 2015, through the date that his employment by Baker Tilly was terminated Baker Tilly failed to pay Pocalyko based on the annual compensation to which he was entitled in accordance with representations of Ciaruffalo and Ferro.

COUNT ONE--ADEA

29. Plaintiff was over forty years old at the time Baker Tilly terminated his employment and similarly situated younger persons such as Mr. Duffus were not terminated.

30. On February 12, 2016, Plaintiff filed a charge of age discrimination against Baker Tilly with the Equal Employment Opportunity Commission. The EEOC issued Plaintiff a right to sue letter on June 14, 2016.

WHEREFORE, Plaintiff requests that judgment be entered in his favor for all relief available to him under the Age Discrimination in Employment Act, including but not limited to back pay, front pay, punitive damages, and attorneys' fees, plus costs

COUNT TWO--Breach of Contract

31. Defendant has breached its contract with Plaintiff by failing to pay him for his services of the rate which Ferro and Ciaruffoli represented that he would be paid during the entire period that he was employed by Baker Tilly.

32. Defendant has breached its contract with Plaintiff by failing to pay him his entire capital contribution.

33. Defendant has breached its contract with Plaintiff by failing to pay him the amounts to which he is entitled under the Retirement and Separation Agreement.

WHEREFORE, Plaintiff requests that judgment be entered in his favor for an amount in excess of $75,000, plus interest and costs.

COUNT THREE--Conversion

34. By failing to pay Plaintiff his entire capital contribution and the amounts to which his is entitled under the Retirement and Separation Agreement Defendant has converted property which belongs to Plaintiff.

WHEREFORE, Plaintiff requests that judgment be entered in his favor for an amount in excess of $75,000, plus interest and costs.

COUNT FOUR--Promissory Estoppel

35. Plaintiff detrimentally relied on the representations of Baker Tilly and its agents regarding his compensation and payment by Baker Tilly of his capital contribution and amounts to which he was entitled under the Retirement and Separation Agreement.

36. Were it not for those representations Plaintiff would have been able to secure alternative employment with another entity at rate equal to or greater than his promised compensation at Baker Tilly, would have been paid his entire ParenteBeard equity interest, and would have begun receiving payments under the Retirement and Separation Agreement.

WHEREFORE, Plaintiff requests that judgment be entered in his favor for an amount in excess of $75,000, plus interest and costs.

COUNT FIVE--Declaratory Judgment

37. As the result of Baker Tilly's failure to perform in accordance with the aforesaid representations Plaintiff's undertakings under the Joinder and Transition Agreement fail for lack of consideration.

WHEREFORE, Plaintiff requests the Court to declare that he is not bound by the terms of the Joinder and Transition Agreement or the Fourth Amended and Restated Partnership Agreement of Baker Tilly dated as of June 1, 2014.

Respectfully submitted,

MARKS, O'NEILL, O'BRIEN,
DOHERTY & KELLY, P.C.

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